SENITIKI NAQA v COMMANDER, REPUBLIC OF FIJI MILITARY FORCES and 3 Ors (HBM0063 of 2003)

HIGH COURT — CIVIL JURISDICTION

SINGH J

23 March 2004

Limitation of actions — extension of time — time — whether Applicant out of time — Constitution of the Republic of Fiji ss 41, 41(4) — High Court (Constitutional Redress) Rules 1998 r 2 — Limitation Act.

The Applicant alleged that he was brutalised and ill-treated by soldiers and the police on 24–25 August 2000. On another occasion, he was likewise detained by the soldiers until 8 September 2000. He referred the brutality and detention to a solicitor and was asked to see a doctor. However, he did not produce a medical certificate.

Over 3 years after his detention, the Applicant brought proceedings before the court pursuant to s 41 of the High Court (Constitutional Redress) Rules 1998 (the Rules). The issue for consideration was whether the Applicant filed out of time in the proceedings brought before the court.

Held — (1) The Applicant failed to show cogent reasons why he should be allowed to file proceedings after a lapse of over 3 years. When he went to see a solicitor the Applicant was a free person and he would be well aware of his rights or if there was any violation of his constitutional rights. Thus, the Applicant was outside the time limits.

(2) The court was empowered to refuse relief if there was adequate remedy under s 41(4) of the Rules. In the case of the Applicant, he was asking for damages for the injuries sustained as a result of the ill-treatment and unlawful detention which was a tort. Thus, the Applicant had an alternative procedure of filing an action for tort but failed to do so. His application on this ground was refused.

Application dismissed.

Case referred to

Metuisela Railumu v Commander Republic of Fiji Military Forces HBM 81J/2002S, considered.

S. Valenitabua for the Applicant

K. Tuinaosara for the first Defendant

L. Daunivalu for the second and third Defendants

S. D. Turaga for the fourth Defendants

Singh J. Section 41 of the Constitution is not like some Aladdin's cave which contains all the remedies for all the ills and the Redress Rules the magical words "*open sesame*" which are visas to those remedies.

These proceedings were brought pursuant to the High Court (Constitutional Redress) Rules 1998. Rule 3(2) of these Rules provides that an application "*must not be admitted or entertained after thirty (30 days from the date when the matter at issue first arose*".

The first issue in these proceedings was whether the Applicant is out of time and therefore should not be permitted to pursue this matter.

The Applicant alleges that he was brutalised and ill-treated by soldiers and police on 24 and 25 August 2000. He also says he was detained by soldiers until 8 September 2000. He first saw a solicitor about the alleged brutality and detention on 18 September 2000 and he was referred to a doctor. No medical certificate has been produced.

The present proceedings were filed on 11 September 2000 just over three years after his release from alleged detention. The issue therefore is can I ignore the time limitation or extend it.

The time limitation in the Redress Rules was considered by Jitoko J in *Metuisela Railumu v Commander Republic of Fiji Military Forces* (unreported, HBM 81J/2002S) and at p 4 he said that in his view "*the time limitation of thirty (30) days … is neither reasonable nor justifiable. In its effect, it interposes itself between the individual's rights guaranteed by the Constitution*".

But having said that, Jitoko J went on to say that an application must be examined on the basis of "*test of reasonableness*" and whether the periods provided in the Limitation Act could be applied as a yardstick for a reasonable time was for the court to decide. He had before him a case of soldiers who had been in detention for 22 months and they believed that the court martial would dispose of the matter but it got delayed.

The present is not a case of detention. The Applicant was a free person from 8 September 2000. He saw a solicitor on 18 September 2000 so he would be well aware of his rights and any violation of his constitutional rights.

In considering the time limit one has to look at the nature of the complaint. Generally speaking complaints of violation of a right are against the organs or employees of the state. State employees deal with a large number of people and complaints can only be properly investigated if lodged early. Otherwise memories might fade or the person complained against get transferred to another department or posted elsewhere or have resigned. The present case involves the difficult times during the 2000 crisis. Soldiers including reserves had been called to maintain law and order. They moved around and acted swiftly. Soldiers do not carry notebooks with them so there would be no record of what transpired. It would be impossible given the passage of time for a proper investigation or an inquiry to be conducted by the superiors into the alleged incident. One does not only look at fairness for the Applicant. I also have to consider whether it is fair to the respondents that these proceedings be allowed to be filed so late.

The Applicant is the one who is outside the time limits. It is for him to give cogent reasons to persuade the court to grant him the indulgence to pursue these proceedings out of time. He has given no reasons for the delay. I see nothing extraordinary either in the character of the Applicant or of the circumstances of his case which warrant an extension of time. In fact being aware of his rights since 18 September 2000 he just let things drift along.

The Applicant has shown no good reason why he should be allowed to pursue these proceedings after a lapse of over 3 years. The application therefore fails on this basis.

Section 41 should be invoked with great caution. One should not lose sight of s 41(4) which empowers court to refuse relief if there is adequate alternative remedy. In the present action the plaintiff's detention be it lawful or unlawful is over. He says he suffered injuries. His summons shows that he is seeking damages for injuries and ill-treatment and unlawful detention. The cause of action is clearly in tort. To establish damages one would need to take oral evidence to assess credibility and quantum. Such cases are normally brought by filing a statement of claim and not by type of procedure laid in the Constitutional Redress Rules. The qualifying word is constitutional not any redress.

The plaintiff here was clearly caught by the limitation period of 3 years for personal injuries. The constitutional redress procedure is not a procedure designed to bypass statutory requirements. The plaintiff clearly had the

alternative procedure of an action in tort available to him but he failed to take it. So on this ground too his application is refused.

The application is therefore refused. I order plaintiff to pay $200 costs to the first Defendant and $200 costs collectively to second, third and fourth Defendants they being represented by same counsel. Time for payment is fixed at 28 days.

Application dismissed.